



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 1.3.2	Subject: <b>PERFORMANCE AND CONDUCT</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 7 and Attachments
Section 3: Human Resources	Effective Date: Jan. 26, 1996
Signature: /s/ Loraine Wodnik, Interim Director	Revised: 01/03/2017

## **I. POLICY**

The Department of Corrections protects the rights of employees, enforces high standards of professional conduct, and provides guidelines concerning ethics, confidentiality, gratuities, and conflicts of interest.

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

## **III. DEFINITIONS**

Contraband – Any item possessed by an offender or found within the facility that is illegal by law, prohibited by policy or procedure, or unauthorized by those legally charged with the administration and operation of the facility.

Criminal Conduct – A charge or conviction of a violation of city, county, state or federal law including all felonies and serious misdemeanors, including but not limited to: assault, sexual assault, traffic violations, i.e., hit and run, driving under the influence (DUI), reckless driving, or other violations by staff that could result in the imposition of a jail sentence and/or suspension or revocation of the violator's driver license.

Department Employee – A person employed by the Department of Corrections who has attained permanent status or is eligible to attain permanent status, as provided in 2-18-601, MCA; volunteers, interns, temporary and short term workers; this term does not include service providers.

HIPAA – The Health Insurance Portability and Accountability Act (1996) which defines nationally recognized regulations for the use and disclosure of an individual's health information.

Service Providers - This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, e.g. facility or program office.

## **IV. DEPARTMENT DIRECTIVES**

### **A. On-the-Job Performance**

1. Employees are responsible for performing duties as specifically assigned either orally or in writing, and as guided by the attached [Code of Ethics](#) and Department policies.
2. Employees and service providers with access to protected health information must read and sign the [HIPAA Confidentiality Agreement](#).

### **B. Off-the-Job Conduct**

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1. Employees will maintain ethical standards that contribute to public safety and trust, and do not reflect negatively on the reputation of corrections professionals.
2. Employees and service providers are expected to comply with all laws and inform the Department of any criminal charges that may affect Department or personal credibility or affect a person's ability to perform in his or her assigned capacity.
3. Employees and service providers who have been arrested for any criminal offense other than minor traffic offenses (except D.U.I.) must notify their supervisor and provide information on their status through final disposition.
4. If an employee is incarcerated or detained and unable to report for work, he or she must contact the immediate supervisor to request a leave of absence for each scheduled shift; failure to request a leave of absence will be considered absence without approval and may result in disciplinary action up to and including dismissal.
5. The supervisor will conduct an inquiry upon notification of an employee's involvement in criminal conduct including gathering facts and conferring with the Human Resources director.
6. The Department may suspend any employee without pay due to circumstances surrounding criminal conduct.

#### **C. Gun Control Act**

1. Employees authorized because of their positions to carry or be issued firearms who are subject to any disqualifying cause under the federal Lautenberg Act of 1996 must notify their supervisors and continue to provide information on their status through final disposition of any such disqualifier.
2. The Department is prohibited from providing firearms or ammunition to any individual who fits any of the following criteria:
  - a. is convicted of a felony offense;
  - b. is a fugitive from justice, i.e. fleeing from custody or prosecution;
  - c. is an unlawful user of or addicted to a controlled substance;
  - d. is adjudicated as a mental defective or committed to a mental institution;
  - e. is an illegal alien;
  - f. has received a dishonorable discharge from the military;
  - g. has denounced U.S. citizenship;
  - h. is subject to a restraining order; or
  - i. has been convicted of a misdemeanor crime of domestic violence.

#### **D. Unacceptable Performance and Conduct**

1. Performance and conduct behavior unacceptable for Department employees includes, but is not limited to, the following:
  - a. violation of law;
  - b. violation of policy, directives, or other employer regulations;
  - c. neglect or failure to carry out assigned duties and responsibilities;

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- d. assaulting, injuring, abusing, intimidating, threatening, endangering, or withholding reasonable necessities from an offender;
- e. committing theft, damage, or unauthorized use or possession of state property or property of any offender;
- f. assaulting, endangering, stalking, or maliciously intimidating or harassing another person;
- g. falsifying any department record;
- h. unauthorized dissemination of confidential information;
- i. abuse of sick leave or excessive tardiness;
- j. unauthorized use of state time, equipment, or facilities for private business or personal use;
- k. failure to remain alert and vigilant while on the job;
- l. failure to follow applicable dress codes;
- m. employee negligence resulting in damage or loss of state property;
- n. using, possessing, controlling, or transferring tobacco in unauthorized areas;
- o. loaning, duplicating, or other use of keys that breach the security of the workplace;
- p. failure to maintain a courteous, productive and otherwise acceptable working relationship with fellow workers and the general public;
- q. use of any illegal drugs;
- r. use of any prescription medications not prescribed by a medical professional;
- s. use or misuse of any prescribed or over-the-counter substance that may impact the effective performance of duties and responsibilities not reported in advance to the appropriate supervisor;
- t. unauthorized use, possession, control, or transfer of contraband in violation of specific division or facility policy and procedures;
- u. sabotaging, impeding, interfering, or failing to cooperate with any authorized Department or law enforcement investigation; and
- v. failure to timely report policy violations, or job-related illegal or unethical behavior to the appropriate authority;
- w. failure to timely self-report an arrest, conviction, or professional disciplinary action against a professional license required by the position; and
- x. failure to self-report potential conflicts of interest to the appropriate administrator prior to acting in possible violation of this policy.

#### **E. Standards of Conduct Law**

1. The Montana Constitution requires that state employees abide by the Standards of Conduct Law. Standards of conduct for public employees may be grouped into four major categories. The law is summarized for each category.
  - a. Gift standards:
    - i. As a state employee you may not accept a substantial gift or economic benefit, generally more than a value of \$50:
      - 1) that would tend to influence you to depart from the faithful and impartial discharge of public duties, or
      - 2) that a reasonable person would know is a reward for official action taken.
    - ii. Acceptance of a gift or economic benefit of any value intended to exert improper influence on you or which you believe is a reward for action taken will be closely

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scrutinized; a gift or economic benefit intended as a bribe, regardless of value, could result in criminal penalties.

iii. The following are excluded from the definition of a gift:

- 1) any gift that is not used and is either returned to the donor within 30 days or donated to a charitable organization;
- 2) food and beverage that you consume while participating in a charitable, civic, or community event related to your employment or that you are attending in an official capacity;
- 3) educational materials directly related to your duties;
- 4) an award presented publicly in recognition of public service; and
- 5) educational activity that does not place or appear to place you under any obligation and is not lavish or extravagant.

b. Self-Dealing:

i. As a state employee you may not:

- 1) disclose or use confidential information acquired in the course of your job for personal financial gain;
- 2) acquire an interest in any business or undertaking you have reason to believe may be directly and substantially affected to its economic benefit by actions taken by your employing agency;
- 3) perform an official act which directly and substantially harms a business when you have a substantial personal interest in a competing business;
- 4) engage in a substantial financial transaction for your private business purposes with a person whom you inspect or supervise in the course of your official duties;
- 5) assist a person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from your agency; or
- 6) perform an official act which directly and substantially provides an economic benefit to a business in which you have a substantial financial interest or for which you are engaged as a counsel, consultant, representative, or agent.
- 7) have a majority interest in any contract made by you in your official capacity or by the Department if you are directly involved with the contract.

c. Unwarranted Privileges:

i. As a state employee you may not:

- 1) engage in any activity, including lobbying, on behalf of an organization of which you are a member while performing your job duties;
- 2) participate in a proceeding before your agency that is within the scope of your job duties, when an organization of which you are an officer or director is involved, or attempt to influence a local, state or federal proceeding in which you represent the state;
- 3) within 12 months following voluntary termination, obtain employment taking advantage unavailable to others of matters with which you were directly involved. Such matters include rules with which you helped formulate and applications, claims or contested cases with which you were actively involved; or
- 4) within six months of termination, contract or be employed by someone who contracts with the state involving matters with which you were directly involved during your employment with the state. This does not apply to

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contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to you if you were terminated due to a reduction in force.

- d. Public Property for Private Business Purposes:
  - i. As a state employee you may not:
    - 1) receive two salaries as a public employee for work during overlapping hours, unless the following exceptions apply:
      - (a) the duplicate pay for one job consists totally of accrued leave and/or compensatory time during the overlapping period;
      - (b) the employee reimburses the public entity for overlapped hours; and/or
      - (c) salary is reduced by the amount received from the other public employer so not to compensate during overlapping work hours.
    - 2) use public time, facilities, equipment, supplies, personnel, or funds for private business purposes. This includes soliciting support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless authorized by law or properly incidental to another activity required or authorized by law.

#### **F. Disclosure Requirements**

1. You may not solicit or accept employment or engage in negotiations or meetings to consider employment with a person whom you regulate in your official duties without first giving written notice to your supervisor or department director.
2. If you are a member of a quasi-judicial board or commission or a board, commission or committee with rulemaking authority, and have a conflict created by a personal or private interest that gives rise to the appearance of impropriety, you must disclose the interest creating the conflict prior to participating in official actions.
3. Prior to acting in a manner that may affect your public duty, including the award of a permit, contract, or license, you must disclose the nature of the private interest that creates the conflict. This disclosure must be in writing to the Secretary of State and must list the amount of private interest, the purpose and duration of your services, any compensation you have received, and other relevant information. If you perform the act involved, you must publicly declare and record the nature of the conflict including all of the elements required previously for the Secretary of State.
4. Prior to December 15 of even-numbered years, department directors and individuals appointed to office must file a business disclosure statement with the Commissioner of Political Practices.
5. If the exception criteria in IV.E.1.d.i.1) above are met, employees must disclose overlapping public position employment and salary information to the commissioner of political practices prior to commencing additional employment.

#### **G. Code of Ethics and HIPAA Confidentiality Agreement**

1. Supervisors will ensure that all employees read and sign the attached [Code of Ethics](#), incorporated fully herein, and return the form to the Office of Human Resources.

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2. Employees and service providers with access to protected health information will read and sign the [HIPAA Confidentiality Agreement](#) and return the form to the Office of Human Resources.

## V. CLOSING

Two main principles apply to your conduct in your job: public trust and public duty. By keeping these in mind as you do your job on a day-to-day basis, you will be able to carry out your duties for the benefit of the people of the state and avoid taking actions that would cause you to depart from your public duty and violate the public's trust.

Provisions of this policy not required by statute will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Office of Human Resources.

## VI. REFERENCES

- A. 2-2-101 through 2-2-304, MCA; 45-7-307, MCA
- B. Title 18 U.S.C. Chapter 44, Gun Control Act of 1968
- C. Montana Operations Manual, Ethics Policy
- D. [Ethics - Standards of Conduct for State Employees; Department of Administration](#)
- E. 4-4069; ACA Standards Supplement, 2008
- F. 3-JTS-1C-23, ACA Standards for Juvenile Correctional Facilities, 2003
- G. 3-3068, ACA Standards for Adult Probation & Parole Field Services, 3<sup>rd</sup> Edition
- H. DOC Policies 1.3.12 Staff Association and Conduct with Offenders; 1.3.13 Administrative Investigations; 1.1.17 Prison Rape Elimination Act (PREA); 3.1.17 Searches and Contraband Control

## VII. ATTACHMENTS

[Code of Ethics](#)

[HIPAA Confidentiality Agreement](#)